IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Writ Petition No.946 of 2007

M/s.Aarey Drugs & Pharmaceuticals
through its Managing Director
Shri Rajesh Pranlal Ghatalia Petitioner

Vs.

State of Maharashtra Respondent

Mr.I.A.Bagaria i/b. Mr.S.S.Khan for petitioner.
Mr.P.A.Pol, APP for State.

CORAM: B.H.MARLAPALLE, J.
November 1, 2007.

P.C.

1. Heard Mr.Bagaria, the learned counsel for the petitioner - company and Mr.Pol, the learned APP. Perused the affidavit-in-reply filed by Shri Ramnath Laxmanrao Pokale, Addl. S.P. at Vasai, Dist. Thane (Rural). The petitioner - company is aggrieved by the order dated 2/12/2006 passed by the learned III Addl. Sessions Judge at Thane thereby rejecting Criminal Misc. Application No.135 of 2006 filed by the present petitioner - company.

2. C.R.No.II-13/06 2006 came to be registered with the Vada Police Station (Vasai Police Station) for the offences punishable under the M.C.O.C. Act and Mr.Rajesh Ghatalia is one of the four accused in

the said C.R. Consequently the police had undertaken investigations and it is their case that the subject Naptha was being imported by Shiva Organics with which Mr.Rajesh Ghatalia is associated as one of the Directors. As per the police Mr.Ghatalia has clandestinely transferred a sum of Rs.270 lakhs from the account of Shiva Organics to the present petitioner - company and, therefore, they have frozen the accounts of both the companies. The present petitioner has Current Account No.1592560000742 with the HDFC Bank, Lokhandwala Branch and on account of the letter received from the Vasai Police Station on 27/7/2006 this account has been frozen. The petitioner-company, therefore, approached the learned Addl. Sessions Judge with an application under Section 457 of Cr.P.C. and prayed for directions to permit the account to be operated. The learned Addl. Sessions Judge observed that as per the statements obtained by the Investigating Officer of the accounts of both the companies i.e. Shiva Organics as well as the present petitioner, went to show that on number of occasions since 8/5/2005 the accused Rajesh Ghatalia transferred various amounts from the account of Shiva Organics to the account of the present petitioner and, therefore, detailed investigation by

the State was necessary and more so because Mr.Ghatalia had an active role to play in the transfer of money into the account of the present petitioner.

3. There is no dispute that the accused Shri Ghatalia is the Managing Director of the present petitioner - company and the petition has been filed through him. It is also admitted that he is one of the Directors of M/s. Shiva Organics. It has been also pointed out by Mr.Bagaria that in Criminal Writ Petition Nos.545 and 1519 of 2007, two of the four accused had prayed for quashing C.R.No.II-13 of 2006 registered with the Vada Police Station and a Division Bench of this Court was pleased to allow both the petitions by a common judgment dated 9/10/2007. The Division Bench referred to the decision in the case of State of Maharashtra & ors. Vs. Lalit Somdatta Nagpal & anr. **[(2007) 4 SCC 171]** and held that the issue of evasion of sales tax would attract an offence under Section 63 of the Sales Tax Act and it would not attract the provisions of MCOC Act. Mr.Bagaria stated on instructions that whatever amount was standing in the account as on 27/7/2007 shall be always retained in case the judgment of the

Division Bench in Criminal Writ Petition Nos.545 and 1519 of 2007 is challenged by the State Government and till these SLPs are decided by the Apex Court.

4. Undertaking of the petitioner-company is hereby noted. Mr.Pol has raised another objection viz. the application before the Sessions Court was filed by Mr. Atul Zhatakia and the present petition has been filed through Mr. Rajesh Ghatalia. Today Mr.Bagaria has placed before me the annual balance sheet of the petitioner - company and Mr.Zhatakia is one of the seven Directors. The name of Mr.Rajesh Ghatalia is shown as the Chairman and Managing Director in the Financial Year 2005-2006. Mr.Bagaria has also pointed out that as per the Company's Resolution the above referred Bank account is operated by two signatories i.e. Mr.Rajesh P. Ghatalia and Mr.Lalit R. Tulsiani.

5. I am, therefore, satisfied that at this stage there is no reason to continue the above stated account of the petitioner - company frozen and the petitioner ought to be allowed to operate the said account on the basis of the undertaking furnished before this Court and as recorded hereinabove and

more so when the allegation of the Investigating Agency is that the petitioner is only a name's sake company and it only exists on paper does not appear, prima facie, factual having regards to the annual report for the year 2005-2006 of the said company.

6. Hence the petition succeeds and the same is hereby allowed. The impugned order passed by the learned Addl. Sessions Judge is hereby quashed and set aside and Criminal Misc. Application No.135 of 2006 stands allowed subject to the undertaking furnished by the company and as noted hereinabove. At this stage Shri Pol, the learned APP stated that the State Government is likely to challenge the Division Bench decision in Criminal Writ Petition No.545 of 2007 and if that be so, liberty to the Respondents to apply for modification of this order, in case the Apex Court order so requires.

. Certified true copy expedited.

(B.H.MARL